



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201407026

NOV 19 2013

T. E. P. R. A. T. 3

U.I.L. 402.08-00

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Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX
Plan X = XXXXXXXXXXXXXXXXXXXX
IRA Y = XXXXXXXXXXXXXXXXXXXX
Employer N = XXXXXXXXXXXXXXXXXXXX.
Amount A = XXXXXXXXXXXXXXXXXXXX
Amount B = XXXXXXXXXXXXXXXXXXXX
Amount C = XXXXXXXXXXXXXXXXXXXX
Company O = XXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This is in response to your request dated June 12, 2013, as supplemented by a letter dated July 11, 2013, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a distribution from Plan X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was because he was out of the country and unaware that a distribution was made from Plan X until expiration of the 60- day rollover period.

Taxpayer A retired from employment with Employer N in 2009. While employed with Employer N, Taxpayer A was a participant in Plan X. Taxpayer A represents that on January 31, 2013, Employer N sent a letter to Taxpayer A's home address advising that his vested account balance was required to be distributed because Taxpayer A was over age 65. Taxpayer A was given 60 days from the date of the letter to notify Employer N of the financial institution to rollover the proceeds into an IRA. Taxpayer A further represents that Employer N did not attempt to notify him by any other means (email or telephone).

On April 4, 2013, Company N's plan administrator, Company O, mailed a check in the net amount of Amount C (Amount A minus Amount B, the federal and state withholdings) to Taxpayer A's home address.

Taxpayer A was out of the country from January 13, 2013, to June 3, 2013, and did not receive any of his mail during this time, and was unaware that Employer N was going to distribute the funds during this period. When Taxpayer A returned home on June 3, 2013, he discovered the check and the correspondence from Employer N. Taxpayer A represents that he would have rolled over the entire amount of the distribution into an IRA if he had known of the distribution. Taxpayer A deposited the check totaling Amount C into IRA Y on June 10, 2013, within seven days from the date he opened the mail containing the distribution check.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount A.

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be included in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was because he was out of the country and unaware that a distribution was made from Plan X until after the expiration of the 60-day rollover period.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from Plan X. With respect to Amount B, provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of Amount B into an IRA will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code. With respect to Amount C, since Amount C has already been contributed to IRA Y, provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement were met, the contribution of Amount C into IRA Y on June 10, 2013, will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxx, xxxxxxxxxxxx, at xxxxxxxxxxxxxxxxxxxx Any correspondence should be addressed to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling
Notice of Intention to Disclose